THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.2172 of 2005

-

.3.2006

Between:

Veesam Narasimha Rao, S/o.Guravaiah

... Petitioner

AND

Veesam Lakshminarayana, S/o.Pitchaiah

And others

...Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No.2172 of 2005

ORDER:

The petitioner and first respondent are residents of Ithavaram village; a gram panchayat in Nandigama Mandal of Krishna District. The quinquennial elections to gram panchayat as well as for the post of sarpanch were held on 14.8.2001. The petitioner and first respondent were in the fray with election symbols of ‘auto rikshaw’ and ‘carom board’ respectively. Out of the total electoral role of 1444 as many as 1168 voters exercised their franchise. The petitioner lost the election (he got 567 votes) and the first respondent was elected declared elected as sarpanch (with 569 votes). The petitioner challenged the election of the first respondent before the Election Tribunal-cum- Court of Junior Civil Judge, Nandigama. By an order dated 22.11.2004, the learned Tribunal dismissed the election petition being O.P.No.7 of 2001. In this writ petition, the petitioner assails the said order and seeks a writ of certiorari to call for the records, quash the order in the election petition and for a consequential direction to the Election Tribunal to scrutinize invalid votes and declare the result of the election for the office of sarpanch afresh.

It is the case of the petitioner that the election officer, the second respondent herein, counted the votes on 14.8.2001 (election day) without proper lighting arrangement, that the second respondent invalidated 32 votes without any reason and in spite of objections, that double votes were not separated, that the request of the petitioner for recounting was not considered and that the election of the first respondent is materially effected.

The respondents 1 and 2 opposed the election petition alleging that gas light was arranged in the counting hall at the time of counting to meet any emergency, that the counting was done in accordance with the rules and that the petitioner himself agreed for declaration of the result. The first respondent also urged that 15 persons, who voted in favour of the petitioner, were also having votes in Mangollu, Kancherla, Nandigama and Ambarupeta villages and that they voted in both the places.

The petitioner and first respondent examined their witnesses and Exs.A.1 to A.5 were marked including a copy of the representation (Ex.A.1) dated 15.8.2001 allegedly issued by the petitioner to the District Collector. After completion of the trial, the Tribunal by order dated 19.3.2004 ordered recounting. The same was questioned before this Court in W.P.No.5904 of 2004. The order of the learned Tribunal dated 19.3.2004 was set aside by this Court and the Election Tribunal was directed to dispose of the matter within a period of six weeks. Accordingly, now, on considering the oral and documentary evidence, the Election Tribunal dismissed O.P.No.7 of 2001.

The first respondent has filed a counter affidavit before this Court denying the petition averments. It is stated by the first respondent that for recounting the petitioner did not comply with Rule 35 of the A.P. Panchayat Raj (conduct of elections of Members and Sarpanch of Gram Panchayat, Members of Mandal Parishad and Members of Zilla Parishad) Rules, 1994 (the Election Rules, for brevity), that the petitioner did not give any requisition for recounting and that the Election Officer acted in accordance with law. It is also stated that the petitioner did not produce any documentary evidence before the Tribunal to show that he made application for recounting as per the Rules 34 and 35 of the Election Rules.

The learned Counsel for the petitioner submits that some of the villagers of Ithavaram were registered voters in Ambarupet and Nandigama villages and such persons, who are having double votes, were permitted to vote, that their votes are void and ought not to have been counted in favour of the first respondent. He also submits that the details of the persons, who are having double votes, were categorically mentioned in paragraph 6 of the affidavit accompanying the election petition and in spite of the same, the Tribunal did not consider that aspect of the matter. He further submits that R.W.2 the Election Officer admitted in his cross-examination about petitioner filing a requisition for recounting and that he did not consider the same, as it was unreasonable for recounting. According to the learned Counsel, this is contrary to Rule 35 of the Election Rules and vitiates the election. Lastly, he would submit that the orders of the Tribunal is contrary to Rule 12(d)(iii) of A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (the Tribunal Rules, for brevity) as any

improper rejection of votes renders the election void. He would urge that invalidating the valid votes and receiving the double votes amounts to refusal and/or rejection of improper votes.

The learned Counsel for the first respondent and the learned Assistant Government Pleader for Panchayat Raj submit that initially by an order dated 19.3.2005, the Election Tribunal ordered recounting of votes and the said order was set aside by this Court in W.P.No.5904 of 2004. Therefore, according to the learned Counsel for respondents, the Tribunal was justified in dismissing the O.P. The learned Counsel for the first respondent also submits that there is no law, which prohibits a person from voting in two gram panahcyats on the same day and, therefore, even if the election of the petitioner that some of the persons, who are having double votes, voted in Ithavaram as well as other villages is true, the same does not render the election of the first respondent illegal and void. Reliance is placed on a decision of this Court in **Simmiti Arjun v Pappala Narasaiah** and a decision of the Supreme Court in **Chinnasamy v K.C.Palanisamy**.

In the background of the pleadings and rival submissions, two questions would arise for consideration namely whether receipt of the votes of persons, who are registered as voters in two gram panahcyats, amounts to improper reception of the votes rendering such votes void and whether the rejection of 32 votes as invalid amounts to improper rejection of the votes. Secondly, whether the second respondent acted contrary to Rule 35 of the Election Rules in rejecting the request of the petitioner for recounting of the votes.

The question whether a person can vote in two gram panchayats if he is registered as voter and whether such voting amounts to improper reception rendering such votes void is no more *res integra*. In **Simmiti Arjuna** (supra), after referring to a decision of the Division Bench of this Court in **K.Sundara Rao v V.Raghava Rao**, this Court held that there is no prohibition for a person to vote in two gram panchayats on the same day if he is registered as a voter. It is apposite to extract relevant paragraphs from **Simmiti Arjuna** (supra).

> The question arose before the Division Bench of this Court whether the vote of a person, who voted in both the Gram Panchayats is to be declared elected. Answering the question in the negative, the Division bench laid down as under.
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> …In our view, it will be proper to hold that it refers to wards in one gram Panchayat and if a person votes in more than one ward or more than once in the same ward, in that gram panchayat, all his votes would be invalid. In cannot be read that it refers to a ward in more than one gram Panchayat, by any stretch of imagination and in our view, it will be out of context also. Therefore, we are not inclined to accept the argument advanced by the learned Counsel that the ward refers to not only in the gram Panchayat in which election takes place, but also ward or wards in the other gram Panchayats, even if election takes place at the same time in the other gram Panchayats. Even if a person casts his votes in different gram Panchayats, on the same date, we are of the view that such vote cannot be declared as invalid under sub-section (7) of Section 14-C in the absence of any positive provisions in this regard.

In 1994 Act there is no provision which is in similar terms as that of Section 14-B(2) of the 1964 Act. However, Section 11(6) extracted hereunder is *in pari materia* with Section 14-C(7) of the 1964 Act.

11(6). No person shall vote at an election under this Act in more than one ward or more than once in the same ward and if he does so, all his votes shall be invalid.

To my mind when the provision is *in pari materia* the interpretation placed by a Court of record even with reference to repealed Act is a precedent binding and all authorities while interpreting an amended provision. There is no reason warranting any deviation from the law laid down by this Court in **K.Sundara Rao v. V.Raghava Rao** (supra). Therefore, I am of the opinion that what is prohibited is vote by same person in more than one ward and no prohibition for a person to vote in two gram Panchayats on the same day if he is registered as voter. On that ground, therefore, the election tribunal could not have invalidated the votes of P.W.4 and his wife. This Court, therefore, holds that the judgment of the Tribunal suffers from this infirmity which is beyond cure.

In view of the above, even if the allegation of the petitioner that there were double votes is true, the same cannot be a ground for invalidating the election. Furthermore, a perusal of the material before this Court would show that the petitioner did not examine any voter or person in proof of the allegations made in the election petition that they votes in two gram panchayats. Therefore, this point is answered against the petitioner.

The principles governing the recounting of votes are well settled. Recounting cannot be ordered on a mere asking by a losing candidate nor can it be resorted in a routine manner. Any election in democracy has sanctity only when the secrecy of ballot is maintained. On mere slightest pretext if the recounting is resorted to secrecy of ballot would be lost and, therefore, Courts insist upon strict rule of pleading material facts and proof of such material facts. The elections to the office of Sarpanch are conducted in accordance with the provisions of the Act and the A.P.Panchayat Raj (Conduct of Elections) Rules, 1994. These Rules deal with notifying the elections, receiving scrutinizing and rejecting nomination papers and conducting voting, counting recounting and declaration of results. Rule 35 of the Rules, which deals with recounting of votes, reads as under.

35. Recount of Votes:- (1) After such announcement has been made under sub-rule (7) of Rule 34, a candidate or, in his absence, his election agent or any of his counting agents may apply in writing to the Election Officer for recounting of the votes either wholly or in part stating the grounds on which he demands such recount.

(2) On such an application being made the Election Officer shall decide the matter and may allow the application in whose or in part or may reject it wholly if it appears to him to be frivolous or unreasonable.

(3) Every decision of the Election Officer under sub-rule (2) shall be in writing

and contain the reason therefor;

(4) If the Election Officer decides under sub-rule (2) to allow a recount of the votes either wholly or in part, he shall –

(a) arrange for the recounting in accordance with Rules 32 and 34;

(b) amend the result sheet in Form 17 to the extent necessary after such recount; and

(c) announce the amendment so made by him.

(5) After the total number of votes polled by each candidate has been announced under sub-rule (4), the Election Officer shall complete and sign the Result Sheet in Form 17 and no application for a further or second recount shall be entertained thereafter.

Sub-rule (7) of Rule 34 of the Election Rules requires an election officer to make entries in a result sheet in Form 17 after counting of all ballot papers contained in all the ballot boxed used in the Gram Panchayat and announce the particulars. After such announcement, any candidate or his election agent may apply in writing to the election officer for recounting of the votes either wholly or in part stating the grounds on which, such recounting is sought. Sub-rule (2) read with sub-rule (3) of Rule 35 of the Election Rules requires an election officer to decide the matter and pass an order in writing containing reasons either for allowing or rejecting application for recounting. If election officer decides under sub-rule (2) of Rule 35 of the Election Rules to allow recounting, procedure to be followed is contained in Rule 35(4) of the Election Rules. In the event of such recounting, the election officer then sign the result sheet in Form 17. After that no request for recounting shall be entertained.

I n **T.Penchalaiah v Election Court** after referring to various decisions of the Supreme Court, this Court elaborately considered the question as to "what could be treated as material facts" for the purpose of seeking an order of recounting. On an analysis of case-law, this Court categorized such cases into four types. The first category of cases is described as those where allegations in the petition are held to be absolutely vague; second category cases are those where some details are given, but they cannot be held sufficient; and in the third category of cases, facts are given in great detail, but are held to have been made only for the purpose of satisfying the principles laid down in Court rulings without any contemporaneous documentary evidence to support the details. In the fourth category, where details are given in the petition were held to be sufficient and to be truthful which are substantiated in the evidence. Dealing with first and second category of cases this Court made following observations.

> The first category of cases is the one where the allegations in the election petition are held to be *absolutely vague*. Such cases present no difficulty. To this category belong the following cases decided by the Supreme Court: ….**Ram Sewal vs. H.K.Kidwai** is a case where the allegation merely was that there had been improper rejection or acceptance of 'several' ballot papers; **Dr.Jagjit Singh vs. Giani Kartar Singh** is also a similar case;

> **Sumitra Devi vs. Sheo Shankar** is one where it was alleged that various irregularities related to 'several' ballot papers or less; and similarly **Ram Avtar vs. Ram Gopal** was one where the allegations were general as in the above cases. **P.K.K.Shamsuddeen vs. K.A.M.Mappilai Mohiddin** also falls in this category. …The second category is the one where some details are given but were held not sufficient. … In **Beliram vs. Jai Behari Lal** paragraph 36 of the judgment specifies that the details stated in the petition referred to mistakes in counting which occurred at Table No.5 and in the second round at Table No.8. These were held to be vague and also not substantiated on account of lack of antecedent or contemporaneous statements of the party or his agent. Similarly in **S.Narayanan vs. S.Semmalal** the (see para 10) allegation that counting was faulty in the 3rd round at tables 8, 9, 10, 13 was held to be vague.

This Court after referring to various cases falling in four categories summarized the principles as under.

> From the aforesaid rulings, the following *principles* can be summarized:- Material particulars have to be stated in the petition. What are material particulars differ from case to case, but general allegations of irregularities in counting can never furnish a ground for ordering a recount. **A half-hearted or partial statement of material particulars may not also be a reason for the Court to order a recount even though it may, in certain circumstances, be sufficient for the Returning Officer to order recount. The petition must specify the 'material' or basis on which his information is based on the record on the basis of which his counting agents have furnished him the information. The existence of any contemporaneous record of the filing of any application before the Returning Officer during the counting would lend support to the particulars stated in the petition. Mere furnishing of minute details so as to satisfy certain requirements of law as decided by the Courts cannot help unless material in support thereof is also set out in the petition. The Court must consider whether the petitioner could not have given other facts, such as polling booth numbers or the round of counting.**
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> (emphasis supplied)

Further, this Court also held that where some allegations are made and particulars are not specified a Tribunal would be committed serious error of law in going into evidence when the pleadings do not satisfy the legal requirements as laid down by the Supreme Court.

In **Mahendra Pal v. Ram dass Malanger** the Supreme Court reiterated that recounting of votes cannot be ordered merely on the ground discrepancy in the number of votes found and the number of ballot boxes issued. In **Mahender Pratap v. Krishan Pal** the Supreme Court held that when once the results are declared, no application for recount can be made. The Supreme Court in a recent judgment in **Chinnasamy** (supra), considered the circumstances, under which an order for recounting of votes can be passed. The Court held that such an order can be passed i) if there is *prima facie* case; ii) material facts thereof are pleaded; iii) the order for recounting shall not be issued by way of roving or fishing inquiry; and iv) an objection has been taken to. In proving this, a candidate has to plead material facts as required under law and in the absence of any such material facts, any amount of

evidence cannot be looked into. It was held as under.

> …Apart from the clear legal position as laid down in several decisions, as noticed hereinbefore, there cannot be any doubt or dispute that only because a recounting has been directed, it would not be held to be sacrosanct to the effect that although in a given case the court may find such evidence to be at variance with the pleadings, the same must be taken into consideration. It is now well-settled principle of law that evidence adduced beyond the pleadings would not be admissible nor can any evidence be permitted to be adduced which is at variance with the pleadings. The court at a later stage of the trial as also the appellate court having regard to the rule of pleadings would be entitled to reject the evidence wherefor there does not exist any pleading.

The above principles should necessarily govern a situation where recounting is sought. In this case, the petitioner or his election agent-P.W.2 did not apply in writing to the election officer for recounting on 15.8.2001. Ex.A.1, which is a representation to the District Collector made on 14.8.2001 is of no avail. It is no doubt true that R.W.2, the Election Officer (respondent No.2 herein) stated in his evidence that he received a requisition for recounting, but he rejected the same. Unless and until a copy of the requisition made is exhibited in the evidence, it is not possible to record a finding that the petitioner pleaded material facts warranting recounting. In that view, the admission of R.W.2 does not in any manner come to the assistance of the petitioner. Secondly, the submission of the learned Counsel for the petitioner that Rule 35 was followed in breach cannot be accepted. R.W.2, the Election Officer, admitted that the petitioner gave a requisition for recounting, that same was unreasonable and that he was not convinced about recounting. He also stated in the cross-examination that he noted on the requisition the reasons for refusing the request for recounting, but the petitioner refused to receive the speaking order. Therefore, this is not a case where the Election Officer violated Rule 35 of the Election Rules. As the petitioner himself relies on the evidence of R.W.2 to prove that he made an application for recounting, he cannot escape from the statement made by R.W.2 that he rejected the application for recounting by passing a speaking order and the petitioner refused to receive the same. Therefore, this Court is not able to countenance the submission made by the learned Counsel for the petitioner that the Election Officer acted contrary to Rule 35 of the Election Rules. As noticed supra, copy of the requisition is not brought on record during the trial. Therefore, his application if any for recounting falls within the first category of the applications for recounting pointed out by this Court in **T.Penchalaiah** (supra).

In the result, for the above reasons, the writ petition is of devoid of any merit and is accordingly dismissed without any order as to costs.

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(**V.V.S.RAO, J**)

March 8, 2006.

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